

AMENDED IN ASSEMBLY MAY 13, 2002

AMENDED IN ASSEMBLY MAY 2, 2002

AMENDED IN ASSEMBLY APRIL 29, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2297

Introduced by Assembly Member Simitian

February 21, 2002

An act to add Chapter 15.5 (commencing with Section 22575) to Division 8 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2297, as amended, Simitian. Online Privacy and Disclosure Act of 2002.

Existing law does not regulate the security and confidentiality of consumer personal and identifying information obtained by persons and entities engaged in online business transactions.

This bill would require ~~an~~ *a person or* entity conducting business ~~transactions~~ on an Internet Web site that collects personal and identifying information from ~~Web browsers~~ *individuals* to conspicuously post and fully comply with a privacy policy on its Web site that identifies the nature of the information that it collects ~~from Web browsers~~ *about individuals*, and with whom the *person or* entity may share the information. The bill would also require the *person or* entity to notify an affected individual in the case of a breach of security that results in the disclosure of personal and identifying information in a manner not covered by the privacy policy. The bill would make findings and declarations and declare the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known as, and may be cited as, the Online Privacy and Disclosure Act of 2002.

SEC. 2. The Legislature finds and declares all of the following:

(a) Each person or entity that engages in online business ~~transactions~~ has a continuing and affirmative obligation to respect and uphold the privacy of ~~customers~~ *individuals* and to protect the security and confidentiality of the ~~customers'~~ *individuals'* personal and identifying information.

(b) It is the intent of the Legislature, in enacting this act, to provide enhanced consumer protections and remedies relative to the disclosure of personal and identifying information obtained ~~through online business transactions~~ *online*.

(c) It is the intent of the Legislature to require persons and entities engaged in online business ~~transactions~~ to provide ~~customers~~ *individuals* with notice of their online privacy rights and improved and more meaningful choices as to whether personal and identifying information may be disclosed, sold, or shared.

(d) It is the intent of the Legislature to protect the constitutionally guaranteed right to privacy of Californians who spend time or conduct business on the Internet, while also fostering the continued growth of electronic commerce.

SEC. 3. Chapter 15.5 (commencing with Section 22575) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 15.5. INTERNET PRIVACY REQUIREMENTS

22575. (a) ~~An~~ *A person or entity* conducting business ~~transactions~~ on an Internet Web site that collects personal and identifying information ~~from Web browsers about individuals~~ shall do both of the following:

(1) Conspicuously post and fully comply with a privacy policy on its Web site that identifies the nature of the information that it collects ~~from Web browsers about individuals~~, and with whom the ~~person or entity~~ may share the information. The privacy policy

1 shall ~~establish~~ *disclose whether or not the person or entity*
2 *maintains* a process for an individual to review and request
3 changes to his or her personal and identifying information that is
4 collected in this manner, *and if so, shall include a description of*
5 *that process. If a person or entity reserves the right to change its*
6 *privacy policy without notice to the individual, that fact shall be*
7 *explicitly stated in the privacy policy.* An historical record of
8 changes to the privacy policy shall also be posted. *Conspicuously*
9 *posting a hyperlink to the privacy policy and fully complying with*
10 *that policy shall constitute compliance with this paragraph.*

11 (2) In the case of a breach of security that results in the
12 disclosure of personal and identifying information in a manner not
13 covered by the privacy policy, the *person or entity* shall notify each
14 affected individual of the security breach, of the ~~type~~ *categories*
15 of information that was improperly disclosed, and to whom, if
16 known, the information was improperly disclosed.

17 (b) *The term “personal and identifying information” means*
18 *individually identifiable information about an individual collected*
19 *online, including any of the following:*

20 (1) *A first and last name.*

21 (2) *A home or other physical address, including street name*
22 *and name of a city or town.*

23 (3) *An e-mail address.*

24 (4) *A telephone number.*

25 (5) *A social security number.*

26 (6) *Any other identifier that permits the physical or on-line*
27 *contacting of a specific individual.*

28 (7) *Information concerning a user that the Web site collects*
29 *online from the user and combines with an identifier described in*
30 *this subdivision.*

31 (c) In addition to any other rights or remedies available at law
32 or in equity, the failure of ~~an~~ *a person or entity* to comply with this
33 section, including a disclosure that is not in compliance with the
34 *person’s or entity’s* posted privacy policy, shall constitute an unfair
35 business practice for purposes of Section 17200.